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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10 **JESUS CORDOVA BARAJAS,** ) **CV F 05-0318 AWI**  
11 **Petitioner,** ) **(CR F 01-5360-01 AWI)**  
12 **v.** ) **ORDER CONSTRUING**  
13 **UNITED STATES OF AMERICA,** ) **PETITIONER'S "NOTICE OF**  
14 **Respondent.** ) **AMENDMENT" AS A**  
15 **(28 U.S.C. § 2255)**  
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18 **INTRODUCTION**

19 In this case, the court has previously issued a memorandum opinion and order denying the  
20 motion of petitioner Jesus Cordova Barajas ("Petitioner") to vacate, correct or set aside his  
21 sentence pursuant to 28 U.S.C., section 2255. (Petitioner's "2255 Motion"). Petitioner had been  
22 convicted by jury trial to one count of manufacture/cultivation of more than 1,000 marijuana  
23 plants and aiding and abetting in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. In his  
24 2255 Motion, Petitioner alleged four grounds for relief. First, Petitioner alleged the base offense  
25 level was incorrectly calculated because the base level of 32 is not based on an amount of  
26 marijuana found by the jury or that could be calculated according to the applicable guideline  
27 standards based on the jury verdict. Second, Petitioner claimed the jury's verdict form and the  
28 jury instruction omitted any reference to aiding and abetting. Petitioner contended that as a

1 consequence, he sentence should be vacated because there is not a correspondence between the  
2 indictment and the jury's verdict. Third, Petitioner alleges he suffered ineffective assistance of  
3 counsel when his attorney failed to challenge the Government's estimates of quantity of  
4 marijuana, failed to object to the two-level enhancement for the firearm, and failed to raise the  
5 aforementioned issues on appeal. Fourth, Petitioner contends he should receive a downward  
6 departure because there was insufficient evidence to support his conviction.

7 On February 8, 2008, the court issued a memorandum opinion and order (the "February 8  
8 Order") denying each of the claims for relief in Petitioner's 2255 Motion. Specifically, the court  
9 found that Petitioner had procedurally defaulted on the first and second claims listed above, and  
10 that those claims were factually unsupported in any event. The court also determined that  
11 Petitioner's third and fourth claims for ineffective assistance of counsel and insufficiency of the  
12 evidence were without merit.

13 Currently before the court is a pleading filed by Petitioner on June 12, 2009, titled  
14 "Motion and Notice of Amendment to Memorandum in Support of Petitioner's Motion to  
15 Correct Sentence in Accordance with 28 U.S.C. § 2255" (hereinafter, the "Motion to Amend").  
16 The Motion to Amend is found at the court's Docket number 66 and is currently designated a  
17 motion for reconsideration. The stated purpose of Petitioner's Motion to Amend "is to redact  
18 from the original 2255 [Motion filed on March 7, 2005, and as amended on August 25, 2005,]  
19 any and all cited cases that do not apply retroactively."

20 The court can only conclude that Petitioner's Motion to Amend is procedurally improper.  
21 The court has already ruled on the merits of the arguments presented in Petitioner's original 2255  
22 motion and as that motion was amended. Even if Petitioner's 2255 Motion was still pending and  
23 if the court could somehow construe the Motion to Amend as timely, the court can find no point  
24 or purpose in the proposed "Amendment." To the extent that Petitioner's Motion to Amend  
25 asserts any legal argument, that argument was previously asserted by either the original 2255  
26 Motion or its amendment. Nothing is added to or subtracted from Petitioner's legal contentions  
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1 or factual allegations as set forth in the original 2255 Motion or as it was amendment by the  
2 instant Motion to Amend.

3 At first blush, Petitioner's Motion to Amend appeared to be an attempt to file a motion  
4 for reconsideration pursuant to Rule 60(b) and it was labeled as such in the court's Docket  
5 Report. However, on further reflection, it does not appear that Petitioner's Motion to Amend  
6 was intended to be a motion for reconsideration because the Motion to Amend makes no  
7 reference to the court's February 8 Order or to any of the rulings set forth therein. Rather, it  
8 appears to the court as though Petitioner is unaware of the court's February 8 ruling. The court  
9 concludes Petitioner may not have received the court's February 8 Order even though that order  
10 was served by mail on the day it was filed. In an abundance of caution the court will direct the  
11 Clerk of the Court to serve a copy of the court's February 8 Order along with this order.

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13 THEREFORE, for the reasons discussed above, Petitioner's Motion to Amend, Docket  
14 No. 66, is hereby DENIED. The Clerk of the Court shall serve Petitioner with both this order  
15 and the Court's order of February 8, 2008, Docket No. 64. Both orders shall be served by mail  
16 with return receipt requested.

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19 IT IS SO ORDERED.

20 Dated: July 24, 2009

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE